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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1977

No. 77-25
77-37
77-42

LOUIS J. LEFKOWITZ, as Attorney General of the State of New York, et al.,
Petitioners,
-against-
SHIRLEY HERRIOT BROOKS and GLORIA JONES, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE LEGAL AID SOCIETY OF NEW YORK CITY.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF RESPONDENTS, AND STATEMENT OF INTEREST OF THE AMICUS.

The Legal Aid Society of New York City respectfully moves the Court, pursuant to Rule 42 of the Rules of the Supreme Court, for permission to file the attached brief amicus curiae in support of respondents, by reason of the Society's substantial interest in the outcome of this case and its considerable experience in litigation concerning the constitutional issue presented herein.

1. The question presented in this case -- whether judicial intervention is proper to require creditors to comply with the requirements of due process when employing the summary remedy of sale of customer property to enforce a warehouseman's lien -- is of basic importance to large numbers of indigent persons in New York City whom the Society

serves.

2. The Civil Division of The Legal Aid Society affords legal representation and assistance in civil matters to persons in the City of New York who cannot afford private counsel. The client population of the Civil Division includes substantial numbers of persons who lose or are threatened with loss of their personal property in sales by warehousemen and other types of lienors. Many of these clients surrender their property to the lienor under pressure of circumstances such as those faced by plaintiffs herein; many dispute the charges later imposed by the lienor. The constitutional issue involved in this appeal is of great importance to those persons who have defenses to the amount or validity of the alleged liens but are unable to free their

property without paying whatever the lienor demands, and under the challenged statute are not guaranteed the right to defend in court against the lienor's unilateral charges prior to the sale and final disposition of their property. The Society's lawyers are familiar with the kind of fact pattern presented here and understand the impact which unfettered use of the lien enforcement methods employed by defendants herein can have upon the City's poor.

3. The Society's lawyers also have considerable experience with the constitutional question of whether state action inheres in the type of summary creditor's remedy here challenged. The identical state action question in an analogous context was presented and resolved in favor of the plaintiff-debtor, represented by the Society, in Blye

v. Globe-Wernicke Realty Co., 33 N.Y. 2d 15 (1973), which invalidated the seizure provisions of the New York innkeeper's lien contained in New York Lien Law Section 181. In Hernandez v. European Auto Collision, 487 F.2d 378 (2d Cir. 1973), the Society's lawyers, representing plaintiff, successfully challenged the enforcement by sale of the garageman's lien authorized by sections 200 - 202 and 204 of the New York Lien Law. The issue of state action was fully briefed by plaintiff's counsel, and in directing the District Court to try the case on the merits of the due process claims, the Second Circuit Court of Appeals implicitly found the requisite state action present. Similarly, in Jones v. Banner Moving & Storage, Inc., 78 Misc. 2d 762 (Sup. Ct. Kings Cty. 1974), in which the Society represented the plaintiff, the Court implicitly found state action in

the very provision challenged here, by declaring the New York warehouseman's lien statute violative of due process. The Appellate Division reversed on other grounds, finding it unnecessary to resolve the constitutional issue raised by plaintiff in light of the possibility of a determination in plaintiff's favor on an alternative cause of action. 48 A.D. 2d 928 (2d Dept. 1974).

4. The Society has thus been actively involved in the development of the contours of the state action doctrine as it relates to summary creditor's remedies in New York. Its experience and familiarity with the issue provide a unique perspective from which to view the implications of this Court's decision in this case for low-income consumers and for the over-all legal framework which

defines debtor-creditor relationships. The Legal Aid Society therefore has an obvious and immediate interest in the issue before the Court in this case. Counsel for respondents has consented to the filing of this brief amicus curiae. This motion is filed because counsel for the Attorney General of New York State, one of the appellants, has refused consent.

WHEREFORE, movant prays that the attached brief amicus curiae be permitted to be filed with the Court.

Respectfully submitted,

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BRIEF AMICUS CURIAE OF THE LEGAL AID SOCIETY OF NEW YORK CITY IN SUPPORT OF RESPONDENTS.

STATEMENT OF CASE

This case concerns the applicability of the Due Process Clause of the Fourteenth Amendment to New York's Uniform Commercial Code Section 7-210, which authorizes a warehouseman to sell a customer's goods summarily without affording the customer a hearing on the validity of the underlying debt. The United States District Court for the Southern District of New York dismissed the complaint for failure to state a claim, on the ground that the warehouseman's sale pursuant to statute did not constitute 'state action' or action 'under color of' state law within the meaning of the Fourteenth Amendment and 42 U.S.C. § 1983. 404 F.Supp. 1059 (1975). The Court of Appeals for the Second Circuit, with one judge dissenting, reversed, holding that the combination of New York's statutory delegation of power to the warehouseman, and

its corresponding expansion of his common law remedies, thrust the State's involvement in the challenged activity over the threshold of state action required to invoke the requirements of the Fourteenth Amendment. 553 F.2d 764 (1977). This Court granted certiorari to consider the question of whether the enforcement of a lien pursuant to Uniform Commercial Code Section 7-210 in the context of this case involves state action and is therefore subject to the constraints of the Due Process Clause of the Fourteenth Amendment. By this amicus curiae brief submitted in support of the respondents, The Legal Aid Society of New York City sets forth its argument as to why this Court should affirm the finding of state action by the Court of Appeals and remand the case to the District Court for determination of whether the statutory scheme

at issue comports with due process.

The factual allegations of plaintiffs, taken as true here since the case was decided below on the basis of defendants' motion to dismiss, are similar in the cases of the plaintiff Mrs. Shirley Brooks and the plaintiff-intervenor Mrs. Gloria Jones. Each was evicted from her apartment by a Marshall of the City of Mount Vernon, New York. Each was told by the Marshall at the time of eviction that only the defendant warehouseman, Flagg Brothers, Inc., could remove and store her goods and furniture. The president of Flagg Brothers accompanied the City Marshall at both evictions. In Mrs. Brooks' case, a dispute arose over the rapidly escalating storage charges and she refused to pay them. When Flagg Brothers threatened to sell Mrs. Brooks' property on the authority of the sales provisions of

§ 7-210, this lawsuit was instituted, seeking to enjoin the sale and declare § 7-210 constitutionally invalid. The decision of the Court of Appeals indicates that by agreement of counsel, Mrs. Brooks was eventually permitted to remove her goods from Flagg Brothers' warehouse without paying the disputed charges. 553 F.2d at 768.

Mrs. Jones was also involved in a dispute concerning the amount of storage charges, and faced a threatened sale of her property pursuant to § 7-210 at the time she moved to intervene in this lawsuit. The decision below states that after the District Court dismissed the action, Mrs. Jones paid Flagg Brothers $1600 in order to achieve the return of her goods, but not all of them were returned and some were returned in damaged condition. 553 F.2d at 768 n. 7.

Thus both plaintiffs had their goods taken into custody by defendant Flagg Brothers under circumstances which were, at best, coercive. Their imminent evictions, combined with the City Marshall's apparent imprimatur of authority upon this particular warehouseman, gave plaintiffs no choice as to how to store their goods. Despite substantial and good faith grounds for disputing the storage charges demanded by Flagg Brothers, had they not had the good fortune to obtain legal counsel plaintiffs would have been forced to allow the bulk of their worldly possessions to be sold without a judicial determination of the amount owing, since they were totally unable to pay the full amount demanded. In the case of Mrs. Jones, the need for use of her goods was so great that she eventually acceded to Flagg Brothers'

demands, paying an exorbitant sum for their return, only to receive incomplete and marred property.

ARGUMENT

AN AFFIRMANCE OF THE SECOND CIRCUIT'S STATE ACTION FINDING IN THIS CASE WILL BRING WITHIN THE AMBIT OF DUE PROCESS CONSTRAINTS THE MOST ARBITRARY AND ABUSIVE CREDITOR REMEDIES, AND WILL PREVENT THE ARROGATION TO CREDITORS OF VIRTUALLY UNCHECKED POWER TO SUMMARILY AND WRONGFULLY DEPRIVE LOW INCOME AND UNKNOWLEDGEABLE CONSUMERS OF THEIR PROPERTY.

1. Introduction

This Court's affirmance of the Second Circuit's state action finding in this case will enable the federal and state courts to require the most arbitrary and severe of the state statutory creditor's remedies to conform to the minimal procedural requirements of due process; conversely, a reversal of the decision below by this

Court would mandate the withdrawal of all judicial involvement and all due process safeguards from these summary creditor's remedies and would effectively leave low-income consumers wholly unprotected against the over-reaching and abusive creditor practices which are permitted by these remedies. These nation-wide implications of this Court's decision in this case are reflected by its inevitable impact in the State of New York.

New York State, and particularly the New York City metropolitan area, is the commercial and consumer transaction center of the United States, and this state makes available the whole range of summary creditor remedies which are utilized throughout the country by creditors to execute against consumers' property for alleged consumer indebtedness.[1] The issue of the constitutionality

1. (fn. next page)

of these various summary creditor's remedies, including the threshold question of state action, has been broadly addressed by the Second Circuit Court of Appeals and the New York Court of Appeals in five cases. In three of those cases,[2] state action was found to be present in statutorily authorized summary procedures; in the other two cases[3] there was found to be insufficient state in-

1. See generally, Note, Future of Creditor's Remedies in New York: The Impact of Fuentes and Blye, 38 Albany L.R. 467 (1974).

2. Brooks v. Flagg Bros., 553 F.2d 764 (2d Cir. 1977); Hernandez v. European Auto Collision, 487 F.2d 378 (2d Cir. 1973); Blye v. Globe-Wernicke Realty Co., 33 N.Y. 2d 15 (1973).

3. Shirley v. State National Bank of Connecticut, 493 F.2d 739 (2d Cir. 1974), cert. denied, 419 U.S. 1009 (1974); Bond v. Dentzer, 494 F.2d 302 (2d Cir. 1974).

volvement to constitute state action. The Second Circuit rejected the contention that state action inheres in the widely utilized method of "self-help," peaceful repossession, Shirley v. State National Bank of Connecticut,[4] supra, or in the execution of a contractual, pre-judgment wage assignment, Bond v. Dentzer, supra.[5] On the other hand, in Hernandez v. European Auto Collision, supra, the Second Circuit implicitly found state action in the enforcement by sale of the garageman's lien pursuant to New York Lien Law Sections 200-204, remanding the case for a trial on the merits of plaintiff's due process claims. See also, Tedeschi v.

4. The statute at issue in Shirley was the Connecticut counterpart to New York Uniform Commercial Code Section 9-503.

5. Bond involved a challenge to New York Personal Property Law Section 3-A.

Blackwood, 410 F.Supp. 34 (D.Conn. 1976) (three-judge court) finding state action in enforcement by sale provisions of the Connecticut statute authorizing a garageman's lien for towing and storage charges). Hernandez was decided within days of the New York Court of Appeals decision in Blye v. Globe-Wernicke Realty Co., supra, in which state action was found in the statutory provision, New York Lien Law Section 181, authorizing the seizure by a hotel keeper of a boarder's property to satisfy a debt without prior hearing. See also, Sharrock v. Dell-Buick, 56 A.D. 2d 446 (2d Dept. 1977). In Brooks, the Second Circuit distinguished Shirley and Bond, which concerned creditor's remedies fully grounded in common law and contract and invoking no enforcement power traditionally reserved to the sovereign, from the statutory provisions at issue in this case

and in Hernandez and Blye, all of which concern enforcement methods wholly created by statute, delegating to the creditor powers distinctly governmental in nature. See 553 F.2d 772-774.

Together, the decisions in the Second Circuit and the New York Court of Appeals embody a state action approach which strikes a necessary balance between the interests of creditor and debtor, an approach which has resulted in the requirement that the most harsh and arbitrary of the summary creditor remedies comport with the minimal notice and hearing requirements of due process, while leaving undisturbed remedies involving purely private arrangements in which the risk of an unremedied wrongful deprivation of the debtor's property is less substantial.

II. Reversal of the Court of Appeals' Decision Herein Would Remove All Judicial Checks On The Most Arbitrary Of Summary Creditor Remedies And Destroy The Rough Accommodation Of Creditor And Consumer Interests Which Due Process Alone Makes Possible.

The Court's reversal of the Second Circuit decision in Brooks would necessarily remove entirely all due process restraints from those summary creditor's remedies which give creditors unchecked and untrammeled power to subject less knowledgeable and less powerful consumers to wrongful and arbitrary deprivations of their property. The consequent removal of all due process limits on these arbitrary summary creditor's remedies would hand creditors and the state legislatures they influence a carte blanche to perpetuate and even enhance state sanctioned creditor's remedies which effectuate the final and complete deprivation of the basic possessions of

consumers, without the requirement that those creditors ever be required to test in court the validity and accuracy of their unilateral self-serving allegations of consumer indebtedness.

Among the collection procedures utilized by creditors, the legislatively-sanctioned enforcement of liens such as those analyzed in Brooks, Blye and Hernandez, involving summary sale of the customer's personal property without a hearing on the validity of the underlying debt, are particularly susceptible to abuse by unscrupulous lienors who seek to profit by their superior economic position and knowledge of the legal system at the expense of unsuspecting and beleaguered consumers.

The experience of Amicus is that the plight of Mrs. Brooks and Mrs. Jones is

not unusual.[6] Warehousemen in particular may first obtain possession of the customer's goods in emergency circumstances such as an eviction, when the customer is frightened, bewildered and lacks the information, time or presence of mind to question the warehouseman about moving and storage charges, or make a deliberate decision about how to dispose of his/her property. Once the warehouseman has custody of the property, the charges begin to escalate. If the customer does not pay the full amount demanded because he/she cannot afford to do so or because of disputes over the charges, they continue to mount up, until the customer is threatened with irrevocable loss of his/her goods by their sale unless the now even more exorbitant fees are paid.

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6. See, e.g., cases discussed in Brief of Amicus Curiae New York State Consumer Protection Board.

With the assurance that the vast majority of customers will be unable or unwilling, because of their urgent need for return of their property, to affirmatively contest the amounts demanded by bringing suit, the lienor may exaggerate the cost of his services with impunity, never having to justify the accuracy and reasonableness of his calculations in a judicial proceeding. In the words of the Chief of the Consumer Frauds and Protection Bureau of the New York State Attorney General's office:

> It's unregulated piracy. Once the warehousemen have your goods, you are in the land of Captain Kidd, and they have you hook, line and sinker ... In New York, warehousemen operate with impunity from the law to the point where, before you get meaningful aid and when there is a dispute, your goods are sold at auction.[7]

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7. New York Times, August 22, 1976, page 1. Cf. Weinstein v. Santini Transfer Co., Inc., 155 Misc. 139 (City Ct. of N.Y., Bronx Cty.
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The risk of wrongful use of the summary remedy authorized by § 7-210 is thus greater than in the retail installment sale or installment loan situations in which the creditor may resort to a wage assignment or self-help repossession. In those situations, the amount of the debt is recorded on a written instrument and is not easily controlled by the creditor or subject to dispute.

It is important to note that the gravity of the deprivation suffered by a consumer whose property is wrongfully sold pursuant to § 7-210 far exceeds that of any of the pre-judgment, temporary deprivations upon which this Court has imposed due process

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1935), in which, commenting on the improper sale of plaintiff's goods pursuant to a predecessor of § 7-210, the Court stated:

> It is a matter of common knowledge that a great many sales are conducted by warehousemen and others in a similar manner and that advantage is thus taken of the needy and helpless who might be incapable of protecting themselves. 155 Misc. at 142.

constraints. See generally, Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974); North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975). Even before application of due process standards, all of the remedies previously considered by this Court provided more balanced accomodation of creditor and debtor interests than the warehouseman's lien statute challenged here. Sniadach involved a pre-judgment garnishment provision, enabling the creditor to freeze an alleged debtor's wages as a provisional remedy, in conjunction with the initiation of a lawsuit on the underlying debt. The creditor was not permitted to dispose of the debtor's wages and could not utilize the garnishment procedure without filing a lawsuit within ten days. Fuentes

applied due process constraints to replevin procedures which allowed the debtor's property to be seized and held pending the outcome of the creditor's action for repossession which was required to be filed before the goods could be seized, and which permitted no disposition to be made until a final adjudication of the underlying claim. See also, Laprease v. Raymours Furniture Company, 315 F.Supp. 716 (N.D.N.Y. 1970) (state law provisions allowing pre-judgment seizure of chattels by plaintiff in a replevin action without court order violate due process). In Mitchell a prompt post-seizure hearing was held to accord the debtor adequate due process protections when his/her property was attached and sequestered to guard against its deterioration, concealment or damage pending trial on the creditor's underlying claim.

In finding that a post-seizure hearing, in which the burden is on the creditor to prove the grounds for seizure, was sufficient, the Court placed substantial reliance on the statutory requirement of judicial authorization of the initial writ of attachment:

> Mitchell was not at the unsupervised mercy of the creditor and court functionaries. The Louisiana law provides for judicial control of the process from beginning to end. [Footnote omitted.] This control is one of the measures adopted by the State to minimize the risk that the ex parte procedure will lead to a wrongful taking. Mitchell v. W.T. Grant, supra, at 616-617.

In contrast, no judicial control whatsoever is exercised over the authority afforded the warehouseman under § 7-210; the state has provided no safeguards to reduce the likelihood of error arising from fraudulent creditor claims. Moreover, the statute allows the debtor's property to be sold without any judicial proceeding, at any time, removing the possibility of returning the goods to the debtor should he/she ultimately prevail on the merits:

> The statutory scheme before us ... contemplates no judicial -- or even impartial -- determination of the amount owing before a final deprivation of property. [Emphasis added.] 553 F.2d at 771; see also, Hernandez, supra, at 385.

Hence, if this Court fails to find state action in the statutory provision at issue here, authorizing sale of the customer's goods without a hearing, it will divest the judiciary of the power to prevent overreaching in the enforcement of the warehouseman's and similar liens through the imposition of due process restraints, and it will eliminate the only effective check on abuse of such practices. Low-income consumers lack sophisticated knowledge of the relevant procedures and adequate access to legal services necessary

to commence a plenary action to enjoin a threatened sale of their goods. Even if the consumer understands the notice of sale sent in accordance with § 7-210 and can retain an attorney, the length of time afforded by the statute prior to sale (25 days) is often simply insufficient to initiate a lawsuit and obtain temporary relief.[8] In light of these difficulties, as this Court has noted, the prospect of consumer lawsuits is highly unlikely to chasten the unscrupulous creditor:

> For if [he] knows that he is dealing with an uneducated, uninformed consumer with little access to legal help, and little familiarity with legal procedures, there may be a substantial possibility that a summary seizure of property -- however unwarranted -- may go unchallenged, and the [creditor] may feel that he can act with impunity.
> Fuentes v. Shevin, 407 U.S. 67, 83 at n. 13 (1972).

(Fn. next page)

Nor can legislative action be relied upon to redress the imbalance in bargaining power between creditor and consumer in this context. While the United States Congress has taken initiative to protect consumer interests in wide-ranging statutory enactments,[9] the rights and obligations of a lienor intra-state do not directly involve interstate commerce and have been left entirely to regulation by individual states. State legislatures, notably responsive to the influence of organized, well-financed interest

8. An application for a temporary restraining order or preliminary injunction staying the sale requests extraordinary relief and imposes a substantial burden of proof on the applicant. Even if the application is granted, the consumer may be required to post a bond which he/she cannot afford. See, New York Civil Practice Law and Rules, Sections 6312 and 6313; Margolis v. Encounter, 42 N.Y. 2d 475, 479 (1977); Caesar v. Kiser, 397 F.Supp. 645, 649 (M.D.N.C. 1975).

9. See, e.g., "Fair Debt Collection Practices Act," PL 95-109, September 20, 1977; "Fair Credit Reporting Act," 15 U.S.C. § 1681;

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groups such as commercial and creditor lobbies, cannot be expected to amend existing summary remedy provisions to afford greater protection to consumer interests.[10] Forerunners of § 7-210 have been on the books in New York since 1879, Ch. 336 (1879), N.Y. Laws 417, and there is no reason to believe the New York State legislature regards the possible abuse of the power of sale conferred thereby on warehousemen with any more urgency now than it has over the past century.[11]

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"Equal Credit Opportunity Act," 15 U.S.C. § 1691 et seq.; "Truth-in-Lending Act," 15 U.S.C. § 1601 et seq.

10. Brown, Personal Property, § 13.1, p. 391 (3rd Ed., 1975). See generally, Note, Wage Garnishment as a Collection Device, 1967 Wis. L. Rev. 759; Clark, Default, Repossession, Foreclosure, and Deficiency: A Journey to the Underworld and a Proposed Salvation, 51 Ore. L. Rev. 302 (1972).

11. In fact, a bill introduced during the 1977 legislative session to regulate and license warehousemen, A. 4505, was stifled in committee.

Indeed, if it were to reject the limited state action finding in Brooks, this Court would invite state legislatures to insulate additional creditor's remedies from the dictates of due process simply by amending existing statutes to withdraw the nominal participation of state officials which has rendered these enforcement provisions subject to judicial scrutiny in the past. See, e.g., Sniadach, supra; Fuentes, supra. See also, Parks v. "Mr. Ford," 556 F.2d 132, 150 (3rd Cir. 1977) (Gibbons, J., concurring).

Thus, this Court's affirmance of the finding of state action in this case will preserve the minimal judicial involvement which alone can assure that the drastic lien enforcement procedures at issue in Brooks, Blye and Hernandez are brought within the ambit of the Fourteenth Amendment's Due Process Clause. Further, an affirmance here will leave undis-

turbed the conclusion of the New York courts that those summary procedures which are entirely a function of private ordering and which contain relatively greater built-in safeguards against misuse, such as the repossession and wage-assignment procedures sustained in Shirley and Bond, do not involve state action and hence are not subject to due process constraints.[12]

In sum, the drastic change in the balance of power between debtor and creditor occasioned by reversal of Brooks would have dramatically harmful effects upon the consumer who is already at a disadvantage in dealing with more powerful and knowledgeable creditors. The creditor, on the other hand, will hardly be burdened by the imposition of minimal due process constraints on the narrowly defined group of summary remedies encompassed by a finding of state action in this case.[13]

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12. The reasoned and balanced analysis of the state action issue which has been adopted by the New York courts is also reflected in the decisions of most other jurisdictions. Thus, the lower courts have found state action present in the more pernicious creditor remedies embodied in the warehouseman's, garageman's and innkeeper's lien laws. See, e.g., Parks v. "Mr. Ford," 556 F.2d 132 (3d Cir. 1977) (en banc) ("garageman's lien"; state action); Cox Bakeries v. Timm Moving and Storage, 554 F.2d 356 (8th Cir. 1977) ("warehouseman's lien"; state action); Culbertson v. Leland, 528 F.2d 426 (9th Cir. 1975) ("innkeeper's lien"; state action); see also, Stypmann v. City of San Francisco, 557 F.2d 1338 (9th Cir. 1977) (possessory lien for towing and storage fees; state action). On the other hand, the courts have declined to find state action in the less drastic creditor remedies. See e.g., Fletcher v. Rhode Island Hospital Trust National Bank, 496 F.2d 927 (1st Cir.), cert. denied, 419 U.S. 1001 (1974) (bank's right of set-off; no state action); James v. Pinnix, 495 F.2d 206 (5th Cir. 1974) (repossession; no state action); Adams v. Southern California First National Bank, 492 F.2d 324 (9th Cir.), cert. denied, 419 U.S. 1006 (1974)(repossession; no state action).

13. The requirement that the warehouseman observe the fundamentals of due process will not impair the possessory lien itself, nor destroy the ability of the lienor to sell a customer's property to enforce his lien, so long as an opportunity for prior hearing is afforded. See Blye, supra at 22. Nor is there any evidence

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to indicate that the imposition of due process constraints would increase the cost of warehousemen's services. The argument that consumer protective limitations on creditor remedies will significantly increase the cost of credit is perennially raised by creditors, but has never been borne out by economic analysis. See, e.g., G. Benston, Risk on Consumer Finance Company Personal Loans, J. Finance, Vol. 32 #2, May, 1977.

CONCLUSION

By confirming the applicability of minimal due process constraints to the enforcement by sale provision of the New York warehouseman's lien statute, affirmance of the Court of Appeals' finding of state action in Brooks will facilitate the restoration of a modicum of balance and fairness to a procedure which, with substantial risk of error and misuse, allows the creditor to summarily dispose of a customer's property without ever establishing the validity of the underlying debt. The Due Process Clause affords the only effective protection against arbitrary and overreaching use of this procedure to hard-pressed, ill-informed consumers threatened with imminent sale of their goods pursuant to § 7-210. On the other hand, a decision of this Court remov-

ing activities authorized by this statutory provision from judicial scrutiny will pave the way for further delegations of unsupervised authority to other groups of creditors, tipping the fragile balance between debtor and creditor interests reflected in lower court decisions on this issue decidedly in favor of the already advantageously positioned creditor. For all of the above reasons, Amicus urges that the judgment of the Court of Appeals be affirmed.

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Respectfully submitted,

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